

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
NEW YORK BRANCH OFFICE  
DIVISION OF JUDGES**

**MILLENNIUM MAINTENANCE &  
ELECTRICAL CONTRACTING, INC.**

**and**

**Case No. 2-CA-35054**

**LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO**

*Terry Cooper, Esq.*, Counsel for the General Counsel.

*Steven Goodman, Esq.*, *Jackson, Lewis, Schnitzler & Krupman*, Counsel for the Respondent.

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me on July 7, 2003 in New York, New York. The Complaint herein, which issued on April 4, 2003 and was based upon an unfair labor practice charge and amended charges that were filed on November 14, 2002<sup>1</sup>, January 30, 2003 and February 26, 2003 by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union, alleges that Millennium Maintenance & Electrical Contracting, Inc., herein called the Respondent, violated Section 8(a)(1)(3) of the Act by laying off employee Ilya Kleyn on about October 10, and by reducing his pay on the same date and making the reduction retroactive, in retaliation for his joining and supporting the Union. The Respondent filed a timely Answer denying the substantive allegations of the Complaint. However, shortly before the commencement of the hearing, counsel for the Respondent stated that he would not contest the allegations of the Complaint and would, instead, litigate the backpay due Kleyn in a subsequent Compliance Specification. Therefore, at the commencement of the hearing herein, counsel for the Respondent withdrew his Answer herein, and Counsel for the General Counsel moved for Summary Judgment. Based upon Respondent's withdrawal of its Answer, and Counsel for the General Counsel's Motion for Summary Judgment, I hereby make the following findings of fact and conclusions of law:

**Findings of Fact and Conclusions of Law**

1. The charge in this proceeding was filed by the Union on November 14, and a copy thereof was served on Respondent on about November 22.

2. The first amended charge in this proceeding was filed by the Union on January 30, 2003 and a copy thereof was served on Respondent on about January 31, 2003.

3. The second amended charge in this proceeding was filed by the Union on February 26, 2003 and a copy thereof was served on Respondent on about April 3, 2003.

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2002.

4. At all material times, Respondent, a corporation with an office and place of business located at 57 Orchard Street, New York, New York, has been engaged in the business of providing electrical contracting and construction services in and around New York City.

5. Annually, Respondent, in conducting its business operations described above, purchases and receives at its facility, goods valued in excess of \$50,000 from other enterprises located within the State of New York, each of which enterprises had received these goods directly from points outside the State of New York.

6. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

8. At all material times Marcelo Aspesi has held the position of Respondent's President and has been a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent acting on its behalf.

9. On about October 10, Respondent laid off employee Kleyn.

10. From about October 10 to June 24, 2003, Respondent failed and refused to recall Kleyn to his former position of employment.

11. On about October 10 Respondent reduced the pay of Kleyn and made the reduction retroactive.

12. Respondent engaged in the conduct described above because Kleyn joined and supported the Union and engaged in concerted activities and to discourage employees from engaging in those activities.

13. By this conduct, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **The Remedy**

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. As the Respondent discriminatorily laid off Kleyn, and reduced his pay rate retroactively, it must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from October 10 to June 24, 2003, when the Respondent offered him reinstatement, less any interim earnings, as prescribed by *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See also *Florida Steel Corp.*, 231 NLRB 651 (1977).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

5 **ORDER**

The Respondent, Millennium Maintenance & Electrical Contracting, Inc., its officers, agents, successors and assigns, shall:

10 1. Cease and desist from

(a) Laying off, or reducing the pay rate of its employees in retaliation for their Union or concerted activities.

15 (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

20 (a) Make Kleyn whole for any loss of earnings and other benefits that he suffered as a result of the layoff and reduction in his pay on about October 10, in the manner set forth above in the Remedy section herein.

25 (b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoff and pay rate reduction, and within 3 days thereafter notify the Kleyn in writing that this has been done and that the layoff and pay rate reduction will not be used against him in any way.

30 (c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

35 (d) Within 14 days after service by the Region, post at its facility in New York, New York copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 40 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the

45 <sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50 <sup>3</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 10, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

**Dated, Washington, D.C.**

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**Joel P. Biblowitz**  
**Administrative Law Judge**

**APPENDIX**

**NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** layoff employees, or reduce their rate of pay, or otherwise discriminate against them, because they joined or assisted Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, or any other union.

**WE WILL NOT** in any like or related manner, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** make Ilya Kleyn whole for any loss of earnings and other benefits that he suffered as a result of the discrimination against him.

**WE WILL**, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoff and pay reduction of Ilya Kleyn, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the layoff and pay reduction will not be used against him in any way.

**MILLENNIUM MAINTENANCE & ELECTRICAL CONTRACTING, INC.**  
**(Employer)**

**Dated** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

26 Federal Plaza, Federal Building, Room 3614, New York, NY 10278-0104

(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (212) 264-0346..

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